

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Declaratory Ruling of the)	
Cellular Telecommunications &)	
Internet Association)	
_____)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC / Commission) Rules 1.415 and 1.419,² hereby provide its reply comments to the Cellular Telecommunications & Internet Association's (CTIA) Petition for Declaratory Ruling (Petition).³ Pursuant to section 1.2 of the FCC's rules,⁴ the FCC now seeks reply comment on CTIA's Petition.

DISCUSSION

The underlying issue in this proceeding is that wireless local number portability (LNP) should not be mandated. USTA agrees with ALLTEL Corporation (ALLTEL) "that WLNP (Wireless LNP) is, at this time, an unjustified and ill-advised distortion to the both vigorously competitive CMRS market and to the currently chaotic wireline market."⁵ The majority of wireline and wireless carriers agree that Commercial Mobile Radio Service (CMRS) providers

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ *Telephone Number Portability*, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, filed January 23, 2003 (CTIA Petition).

⁴ 47 C.F.R. § 1.2.

should not be required to port numbers. Conversely, the FCC has decided that CMRS providers must provide intra-modal LNP by November 24, 2003.⁶ State Commissions agree with the FCC and favor the implementation of wireless LNP. As the Commission is well aware, the issue of wireless LNP has not been resolved and is now pending before the D.C. Circuit in *Cellular Telecommunications & Internet Association and Cellco Partnerships, d/b/a Verizon Wireless v. FCC*, No. 02-1264 (D.C. Cir.).

It is premature for the FCC to even consider the CTIA Petition prior to the D.C. Circuits decision. Until there is finality concerning CMRS providers' obligations to provide LNP, it would be inequitable and arbitrary for the FCC to impose further LNP obligations on incumbent local exchange carriers (ILECs) to facilitate inter-modal competition with CMRS providers. We agree with the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) that {T}he one-way portability called for by the Petition would clearly establish a competitive advantage for CMRS providers through one-sided regulation and must therefore be rejected.”⁷

The FCC has spent seven years effectuating an LNP implementation plan that promotes competition. The LNP regime has been a success and need not be expanded any further.⁸ The

⁵ Comments of ALLTEL Corporation at 2 (ALLTEL).

⁶ See *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion & Order, 17 FCC Rcd 14972 (2002).

⁷ Organization for the Promotion and Advancement of Small Telecommunications Companies Comments at 5 (OPASTCO).

⁸ See e.g. *Numbering Resource Optimization; Telephone Number Portability*, Further Notice of Proposed Rulemaking, CC Docket Nos. 99-200 and 95-116, Ex Parte Presentation of Lawrence E. Sarjeant, United States Telecom Association, (Dec. 3, 2002). USTA opposes wireless LNP. We support LNP implementation in those exchanges in the top 100 MSAs where more than one local exchange carrier operates. However, USTA does not support implementation of LNP for any rural (as defined in the 1996 Act) or two percent carrier in the top 100 MSAs without a bona fide request. We oppose expansion of LNP outside the top 100 MSAs. USTA contends that it is

Commission determined in the Verizon Wireless Petition for Partial Forbearance proceeding that more customers are substituting their wireless telephone for their wireline telephones.⁹ In addition, USTA believes that speculation surrounding customer benefits associated with the expansion of existing LNP requirements that CTIA seeks in its Petition has not been supported by credible documentation. Competition is occurring between wireline and wireless carriers unimpeded by the existing LNP obligations imposed on ILECs and that inter-modal LNP will not necessarily invite more competition.

Further, expansion of LNP as proposed by the Petition will cause dramatic financial hardship for ILECs. The costs associated with further expansion of LNP will be passed on to the consumer through higher prices and will further place ILECs at a competitive disadvantage to carriers that do not have LNP obligations and the financial burdens associated with it.

I. A Declaratory Ruling Is Not The Proper Proceeding To Address CTIA’S Petition, Should The FCC Entertain The Issues Presented

USTA agrees with AT&T Corporation’s (AT&T) assertion that the FCC should take the necessary time to examine and clarify the issues, which will require the creation of an adequate record so that “due regard to cost, efficiency, technological feasibility and administrative simplicity” is given.¹⁰ For the FCC to do any less would seriously compromise the rights of wireline carriers.

essential that any LNP deployment requires a cost recovery mechanism. Moreover, we support LNP deployment where the existence of competition provides a justification for its deployment and where carriers that are required to deploy LNP are allowed to recover their costs on a competitively neutral basis.

⁹ *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and telephone Number Portability*, Memorandum Opinion & Order, 17 FCC Rcd 14972 (2002).

¹⁰ Comments of AT&T Corporation at 5 (AT&T).

Moreover, USTA contends that the Commission must build an extensive record such as it did when it erroneously required CMRS providers to implement intra-modal LNP because of the complexity of the issues presented. In May of 1998, the North American Numbering Council (NANC) submitted to the Chief of the Common Carrier Bureau the Local Number Portability Administration Working Group Report on Wireless Wireline Integration (Working Group Report).¹¹ The Working Group Report concluded that “consensus was not reached on porting between wireline and wireless carriers.”¹² The working group was left with three key questions that NANC needed to resolve:

- Does the difference in the scope of porting capabilities between wireless and wireline service providers create a competitive disadvantage which would be inconsistent with the FCC’s objectives for numbering?
- If so, is the competitive disadvantage overridden by the FCC’s order to implement wireless – wireline portability to encourage CMRS – wireline competition?
- Would the inability in certain situations for a wireless end user, staying at the same location, to keep their telephone number when changing to a wireline service provider be acceptable from a statutory or regulatory perspective?¹³

The NANC was unable to answer the three key questions and the rate center issue was forwarded to the Commission to resolve. The questions presented to the FCC are complex and contentious and will require substantial input from the industry. USTA agrees with AT&T’s conclusion that “{T}hese issues are no less important than the wireless industry’s LNP rules, and must not be given short shrift.”¹⁴ Accordingly, the Commission should not grant the relief requested in CTIA’s Petition in a declaratory petition proceeding.

¹¹ *Local Number Portability Administration Working Group Report on Wireless Wireline Integration*, (May 8, 1998).

¹² *Id.* at 22.

¹³ *Id.* at Appendix D § 1.1

¹⁴ AT&T at 5.

II. Wireline LNP Is Bound By The ILEC Rate Center And The FCC Should Not Reconsider Location Portability

As stated by the Illinois Citizens Utility Board, “{T}he essence of this issue is that wireline local exchange carriers route and rate (price) calls with much more sensitivity to distance than wireless carriers.”¹⁵ Wireline carriers route and rate calls based upon individual rate centers, where as wireless carriers calling plans are not limited by geographic scope to rate centers. The NANC found that portability is limited by the boundaries of the ILEC rate center/rate district due to rating and routing concerns.¹⁶ Consequently, USTA believes that the Commission correctly found that wireline LNP should be bound by the existing rate center of the ILEC because “the inherent differences in service areas and terminal mobility” make it extremely difficult for expanded wireline to wireless LNP.

USTA agrees with CenturyTel that CTIA’s Petition “should be denied because it would disassociate numbers from the rate center and in effect, require location portability.”¹⁷ CTIA’s Petition states that it “is unrelated to location portability, which the Commission has declined to mandate.”¹⁸ CTIA, however, claims that “porting must be done throughout the CMRS service area.”¹⁹ OPASTCO accurately characterizes the CTIA Petition as a “thinly veiled attempt” to port numbers from ILEC rate centers to any location within a CMRS provider Metropolitan Trading Area (MTA), which may be in a different LATA or state.²⁰

¹⁵ Comments of the Illinois Citizens Utility Board at 4.

¹⁶ See Comments of CenturyTel at 3 (quoting the *Telephone Number Portability*, Second Report and Order, CC Docket No. 95-116, 12 FCC Rcd 12281, 12283-84 (1997)) (CenturyTel).

¹⁷ *Id.*

¹⁸ CTIA Petition at 17.

¹⁹ *Id.*

²⁰ OPASTCO at 4.

III. Interconnection Agreements Are Essential For Inter-modal LNP

USTA agrees with CenturyTel and SBC Communications Inc. (SBC) that the FCC “must reject CTIA’s assertion that nothing more than a standard service-level porting agreement is necessary before a wireline carrier ports to a CMRS provider.”²¹ As SBC correctly points out, “there is no such thing as a ‘standard service-level porting agreement.’” Consequently, USTA concurs with SBC that pursuant to section 252(a)(1) of the Communications Act of 1934, as amended,²² that the “agreed upon document that sets out the terms and conditions by which incumbent LECs provide number portability is an interconnection agreement and must be filed with the appropriate state commission.”²³

Moreover, CTIA claims that “the traffic will be governed by the terms of the interconnection agreement already established between the two carriers.”²⁴ CenturyTel correctly observes that in many instances there are no pre-existing interconnection agreements between ILECs and CMRS providers.²⁵ Accordingly, interconnection agreements are essential before number porting occurs “in order to ensure the proper routing and completion of calls and maintain service quality standards.”²⁶

IV. The Bona Fide Request Trigger

The National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association (Joint Commenters) contend that CTIA’s Petition could “unjustifiably

²¹ See CenturyTel at 6 (restating CTIA’s assertion in its Petition); SBC Communications Inc at 7 (SBC).

²² 47 U.S.C. § 252(a)(1).

²³ SBC at 8.

²⁴ CTIA Petition at 3-4.

²⁵ CenturyTel at 7.

²⁶ *Id.*

expand the obligation of rural carriers to implement LNP.”²⁷ The FCC’s current rules “limit this requirement to switches in the largest 100 Metropolitan Statistical Areas (MSAs) for which another carrier has made a specific request for the provision of number portability.”²⁸ The FCC limited the LNP requirements on small and rural LECs until they received a *bona fide* request.²⁹ The FCC did this to “address the concerns of smaller and rural LECs with end offices within the 100 largest MSAs that they may have to upgrade their networks at significant expense even if no competitors desire portability.”³⁰ USTA is also concerned that the CTIA Petition, if granted, may result in mandatory implementation of LNP that would do away with the *bona fide* request trigger. The FCC is already considering the *bona fide* request issue in the *LNP Further Notice*. Thus, the *bona fide* request issue should be resolved in the *LNP Further Notice* and not in this declaratory ruling proceeding.³¹

V. If The FCC Grants CTIA’s Petition, The FCC Must Ensure a “Level Playing Field” For Fair Inter-Modal Competition

USTA remains opposed to the imposition of LNP requirements on CMRS providers. Nevertheless, if the Commission grants the Petition, the FCC “must address the broad scope of regulatory issues that impact fair and balanced intermodal competition including intercarrier compensation issues, regulatory parity issues and the conditions upon which universal service is made available to intermodal competitors.”³² ALLTEL is correct. A “level playing field” is essential in order for there to be fair inter-modal competition.³³

²⁷ The National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association Comments at 5 (Joint Commenters).

²⁸ Joint Commenters at 5.

²⁹ *Id.*

³⁰ *See Id.* (quoting Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236 at ¶ 59 (1997)).

³¹ *Id.* at 5.

³² ALLTEL at 7.

³³ *Id.*

CONCLUSION

For the reasons set forth above, USTA respectfully requests that the Commission deny CTIA's Petition.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

March 13, 2003